In the United States
Circuit Court of Appeals
For the Ninth Circuit.

Max Goldring, doing business under the firm name and style of Goldring Packing Company,
Plaintiff and Appellant,

vs.

Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California, E. H. Cohee, Individually and as Acting Collector of Internal Revenue for the Sixth District of California, and Guy T. Helvering, Commissioner of Internal Revenue,
Defendants and Appellees.

In Equity.

APPLICATION FOR PRELIMINARY INJUNCTION PENDING APPEAL.

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SUBJECT INDEX.

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Max Goldring, doing business under the firm name and style of Goldring Packing Company, *Plaintiff and Appellant,* *vs.* Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California, E. H. Cohee, Individually and as Acting Collector of Internal Revenue for the Sixth District of California, and Guy T. Helvering, Commissioner of Internal Revenue, *Defendants and Appellees.*	In Equity.

APPLICATION FOR PRELIMINARY INJUNCTION PENDING APPEAL.

Comes now Max Goldring, doing business under the firm name and style of Goldring Packing Company, appellant herein, and respectfully states to the Court that the said appellant on the 3rd day of July, 1935, brought a Bill in Equity in the District Court of the United States, Southern District of California, Central Division, entitled "Max Goldring, doing business under the firm

name and style of Goldring Packing Company, plaintiff, vs. Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California, E. H. Cohee, Individually and as Acting Collector of Internal Revenue for the Sixth District of California, and Guy T. Helvering, Commissioner of Internal Revenue, Defendants," and numbered 703-H, Equity, in the Central Division of said United States District Court, a copy of which said Bill of Complaint is hereto attached, marked Exhibit A, and by this reference hereby incorporated herein and made a part hereof as though fully stated and set forth.

That thereafter the appellant herein filed its amendment to complaint and second amendment to complaint pursuant to order of Court allowing the filing thereof. That a copy of said Amendment to Complaint is hereto attached, marked Exhibit B, and by such reference hereby incorporated herein and made a part hereof as though fully stated and set forth. That a copy of said Second Amendment to Complaint is hereto attached, marked Exhibit C, and by such reference hereby incorporated herein and made a part hereof as though fully stated and set forth.

That in said Bill of Complaint and Amendments thereto, in said Cause No. 703-H, Equity, the appellant herein alleged that plaintiff and defendants are residents of the Southern District of California, Central Division; that the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Sixth District of California; that plaintiff is engaged purely and solely in intrastate business; that plaintiff is a hog processor; that the action is brought to enjoin the collection of the processing tax levied under the Agricultural Adjustment Act of May 12, 1933, as amended; that said Act sets forth that the declared policy of Congress in Section 2, is to establish and

maintain such balance between production and consumption of agricultural commodities as will give such commodities a purchasing power equal to the cost of the articles farmers must buy; to approach such equality of purchasing power gradually and to protect consumers' interest; that said Act further provides for levy, assessment and collection of a processing tax on the first domestic processing of commodities, including hogs, at a rate to be determined by the Secretary of Agriculture; that said Act provides that the Secretary of Agriculture shall have the power to enter into reduction of crops agreements with farmers; to provide for rental or benefit payments to farmers in connection therewith, in such amounts as the said Secretary deems fair; to put into effect the processing tax; to make regulations, and provides for a penalty for violation thereof; to make exemptions from or additions to the list of commodities set forth in the Act; said Act provides that the rate of said tax shall equal the difference between current average price for the commodity and the fair exchange value thereof, except under certain conditions, when the said Secretary shall prescribe some other rate; defines fair exchange value; provides for appropriation of the entire proceeds of the processing tax plus additional sums to carry out the Act and make rental and benefit payments. Said Complaint further alleges that the said Secretary proclaimed that benefit payments were to be made with respect to hogs and put the processing tax into effect at certain rates which from time to time he increased; alleges the levy, assessment and collection of the processing tax against plaintiff and payment thereof for all months from inception to May, 1935; alleges penalties for nonpayment of tax; alleges that said Act is void, invalid and unconstitutional upon the following grounds: (1) That said Act violates the 5th Amendment to the

United States Constitution; (2) that said Act violates the 10th Amendment of the United States Constitution; (3) that said Act violates Article I, Section 8, of the United States Constitution; (4) that said Act delegates legislative powers to the Secretary of Agriculture; (5) that said Act attempts to regulate intrastate business; (6) that said Act is not being administered in accordance with its terms by the Secretary of Agriculture; said Complaint further alleges the processing tax assessed or about to be assessed against plaintiff and the amounts thereof, the liability for payment thereof, the imposition of penalties in the event of nonpayment; the Complaint alleges plaintiff has no plain, speedy or adequate remedy at law, and the grounds therefor; alleges multiplicity of suits both as to refunds and for damages because of the trespasses committed or threatened to be committed against plaintiff by defendant; the destruction of plaintiff's property and property rights; the inability of defendants to answer to plaintiff for damages; that plaintiff is entitled to an injunction and a declaration as to the constitutionality of the said Act; that plaintiff has absorbed the said tax and not passed the said tax on; that plaintiff has sustained and is sustaining losses from its pork processing business solely because of said Act and the processing tax levied pursuant thereto; all of which is more fully set forth in plaintiff's complaint and amendments thereto, Exhibits A, B and C, to which reference is hereby respectfully made.

A summons was duly issued in equity in said cause and served upon the defendants. That at the time of filing said Complaint a Temporary Restraining Order was issued by the said District Court of the United States, copy of which is hereto attached, marked Exhibit D, and by such reference thereto is hereby incorporated herein and made a

part hereof as though fully stated and set forth. That said Temporary Restraining Order was duly served upon said defendants. That thereafter the appellant herein caused to be served upon the defendants a notice that said appellant would apply to the Honorable Harry A. Hollzer, United States District Judge for the Southern District of California, Central Division, in the City of Los Angeles, on July 12, 1935, for Preliminary Injunction restraining the defendants from (a) collecting or attempting to collect from plaintiff such or any processing tax, whether by distraint, levy, action at law or in equity; (b) imposing or giving notice of intention to impose or causing to be imposed or filed any lien upon the property of plaintiff, whether real or personal; or (c) in any other manner collecting or attempting to collect said tax.

That thereafter defendants served upon plaintiff a copy of motion to dismiss, copy of which is hereto attached, marked Exhibit E, and by such reference incorporated herein the same as though fully stated and set forth, together with objections to the granting of a preliminary injunction, copy of which is attached hereto, marked Exhibit F, and by such reference hereby incorporated herein as though fully stated and set forth, and caused the same to be filed in the cause.

That thereafter a hearing was duly had on the application to the Honorable Harry A. Hollzer, Judge of the said District Court, for a Preliminary Injunction, and the Honorable Harry A. Hollzer, upon hearing, denied defendants' motion to dismiss, overruled their objections to the granting of a Preliminary Injunction, and did grant to plaintiff a Preliminary Injunction as prayed for. That a copy of said Preliminary Injunction is hereto attached, marked Exhibit G, and by such reference hereby incorpo-

rated herein and made a part hereof as though fully stated and set forth. That a copy of said Preliminary Injunction was duly served upon the defendants.

That thereafter the defendants served upon the plaintiff Notice of Motion to Vacate Temporary Injunction, together with Motion to Vacate Temporary Injunction, in said suit No. 703-H, Equity, notifying the plaintiff that said defendants intended to move the above entitled Court, in the courtroom of the Honorable Paul J. McCormick, on the 27th day of August, 1935, at ten o'clock a. m. thereof, for an Order vacating and setting aside the Temporary Injunction heretofore entered on the grounds and for the reasons stated in said Motion. That a copy of said Notice of Motion to Vacate Temporary Injunction and a copy of Motion to Vacate Temporary Injunction are attached hereto, marked Exhibit H and Exhibit I, respectively, and by such reference each is hereby incorporated herein and made a part hereof as though fully stated and set forth.

That thereafter, and on the 27th day of August, 1935, the defendants made their said Motion to Vacate Temporary Injunction and after hearing had thereon the Court, on the 30th day of August, 1935, made its Order in said Cause No. 703-H, Equity, granting defendants' Motion to Vacate Temporary Injunction, thereby vacating said preliminary injunction. That a copy of said Order, entitled "Minute Order on Motion to Vacate Temporary Injunction," issued in said suit No. 703-H, Equity, is attached hereto, marked Exhibit J, and by such reference hereby incorporated herein and made a part hereof as though fully stated and set forth.

That since the filing of said Bill of Complaint in said suit No. 703-H, Equity, and the hearing on the application for preliminary injunction and the granting thereof as

aforesaid, the Congress of the United States did enact an amendment to the Agricultural Adjustment Act, which said amendment is known as Senate Amendment No. 114, H. R. 8492, and is embodied in the amendments to the said Agricultural Adjustment Act enacted by Congress, and signed by the President of the United States on the 24th day of August, 1935, which said Amendment did substantially, effectively, and for all practical purposes and to all intents take away and deny plaintiff below, appellant herein, all remedy at law, for the reason that said amendment provides, among other things, that before any refund can or shall be made under said Act, of any tax paid thereunder, by reason of the invalidity of said Act the taxpayer must establish to the satisfaction of the Commissioner of Internal Revenue and the Commissioner of Internal Revenue shall find and declare of record, after due notice and hearing, that the claimant, taxpayer, absorbed the entire amount of said tax so paid and did not pass said tax or any part thereof, either directly or indirectly, to any person, firm, corporation or individual. That such fact is uncertain and indefinite or impossible of direct proof and is particularly rendered so in regard to appellant's business, to wit, pork packing, for the reason that the processing tax is levied upon the live hog at the rate of $2.25 per live cwt. That not more than 75 per cent of live hog is usable in the pork packing business; that such 75 per cent of the live hog is divided into numerous different food products, including such food products as hams, sausage, bacon, lard, roasts, chops, hocks, feet, heads, shoulders, trimmings, casings, etc.; some of which products are

pickled, others smoked, and others go through sundry other processes and some are sold fresh. That to allocate the proportional part of tax to each such article would be uncertain, indefinite or impossible, because it would be practically impossible or impossible to follow the different portions of each dressed hog and show the price thereof and the amount received by plaintiff upon the sale thereof because said dressed hogs are cut into the said above named portions and stored and kept until sale thereof is available, and different portions are necessarily marketed at different times at greatly varying prices and, therefore, tracing the relation of the price paid for each hog, including the processing tax, and the aggregate price obtained upon the sale of all said portions at such different times in varying market or sale prices so as to prove the absorption or non-absorption of the said processing tax by plaintiff would be most uncertain, inadequate, ineffective or impossible. That plaintiff knows that said processing tax can not be passed on. That even assuming that such allocation of the processing tax could be made for the purpose of proving the absorption of said tax, there would be required by plaintiff such an extensive and expensive bookkeeping system that the attendant employment of additional employees would create a much further and greater loss than plaintiff is now incurring. That by reason thereof should the appellant herein be relegated to his action at law for a refund after paying the tax it would result in denying appellant herein any relief at law whatsoever, although it would in fact be entitled to such refund.

That appellant did, on the 12th day of September, 1935, file herein, after Order of Court allowing the same, its Supplemental Complaint, alleging the aforesaid facts. That a copy of said Supplemental Complaint is attached hereto, marked Exhibit K, and by such reference hereby incorporated herein and made a part hereof as though fully stated and set forth. That in said Supplemental Complaint plaintiff alleged that said Agricultural Adjustment Act had been amended and in particular, Section 21 thereof, and that by such amendment any and all remedy at law which plaintiff may or might theretofore have had has, for all practical purposes, been taken away and that by reason of such amendment plaintiff has no plain, adequate, speedy, full and complete remedy at law, for the reasons therein stated, all of which is more fully set forth in said Supplemental Complaint, marked Exhibit K, to which reference is hereby respectfully made.

That appellant duly excepted to said Order vacating preliminary injunction.

That on the 13th day of September, 1935, the appellant herein filed its petition for an appeal, which was duly allowed by the Honorable Paul J. McCormick, United States District Judge, who heard defendants' Motion to Vacate Preliminary Injunction, and filed at the same time its Assignment of Errors, and a citation was issued and a cost bond duly filed and approved by the Honorable Paul J. McCormick, præcipe filed and notice of such filing duly made upon appellees.

That appellant has, therefore, perfected its appeal to the Circuit Court of Appeals for the Ninth Circuit, making

said cause returnable at San Francisco, California, as provided by law.

This appellant has duly caused to be prepared a transcript of record in said cause and will file the same in accordance with law, within the time allowed by law, in the clerk's office of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California. In the meantime, pending the hearing of the appeal on its merits, this appellant alleges that for the reasons set forth in its Bill of Complaint and Amendments thereto, in said cause No. 703-H, Equity, in the United States District Court, in and for the Southern District of California, Central Division, and because the Judge of said Court did vacate plaintiff's preliminary injunction, the appellees herein will, unless restrained by preliminary injunction granted by this Court, to the irreparable damage and loss of the appellant herein, proceed with the collection of said tax and will file or cause to be filed and imposed liens against plaintiff's property, and have threatened to and will distrain and seize plaintiff's property and sell the same for the collection of said tax, and will render plaintiff's property and property rights wholly valueless and worthless and will commit continuous trespasses and breaches of the peace against appellant and appellant's property, leaving appellant wholly unable to recoup its losses and damages, for the reason that appellees are wholly unable to answer to appellant in an action for damages by reason of the commission of said acts, for the reason that appellees do not have the financial ability to answer to such judg-

ment. The appellant alleges that it has no complete, plain, speedy, adequate and full remedy at law and that the preliminary injunction should be granted herein as prayed for in its bill of complaint, which appears in the record of this cause. The appellant alleges that it is ready and willing to give any reasonable bond that may be required by an Order of this Court, and thereupon prays that this Court make an Order granting the preliminary injunction upon such terms and conditions as to this Court may seem just and equitable in the premises and that the order of the Honorable Paul J. McCormick, District Judge, vacating the appellant's preliminary injunction, be set aside and that the preliminary injunction be granted as prayed.

Claude I. Parker
Ralph W. Smith
J. Everett Blum
Solicitors and Counsel for Plaintiff and Appellant.

[Exhibit A.]

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

MAX GOLDRING, doing business under the firm name and style of GOLDRING PACKING COMPANY, Plaintiff, vs. NAT ROGAN, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF CALIFORNIA, E. H. COHEE, INDIVIDUALLY AND AS ACTING COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF CALIFORNIA, and GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, Defendants.	In Equity No. 703-H

BILL OF COMPLAINT IN INJUNCTION.

Comes now the plaintiff and complains of the defendants and alleges:

I.

That plaintiff, MAX GOLDRING, now is and has been at all times herein mentioned doing business under the firm name and style of GOLDRING PACKING COMPANY. That plaintiff is a resident of the Southern District of California, Central Division.

II.

That the defendant, NAT ROGAN, is the duly appointed, qualified and acting Collector of Internal Revenue for the Sixth District of California and is a resident of the Southern District of California, Central Division and the Sixth Revenue District of California and of the County of Los Angeles, State of California.

That the defendant, E. H. COHEE, is the duly designated acting Collector of Internal Revenue for the Sixth District of California and is a resident of the Southern District of California, Central Division and the Sixth Revenue District of California and of the County of Los Angeles, State of California.

That the defendant, GUY T. HELVERING, is the duly appointed, qualified and acting Commissioner of Internal Revenue and a resident of Washington, D. C.

III.

That plaintiff is engaged in the business of buying, at its plant in Los Angeles, California, hogs, cattle and other live stock, slaughtering the same and converting and packing same into food products and selling said food products so converted and packed in its trade territory, which trade territory is wholly within the State of California. That all of its purchases, all of its sales, and all of its business is transacted within the State of California

and that it is not engaged in any interstate commerce or business either directly or indirectly nor does any of plaintiff's business affect interstate commerce either directly or indirectly.

IV.

That this is an action brought to enjoin the assessment of certain so-called processing taxes about to be assessed against the plaintiff by the defendant GUY T. HELVERING, as Commissioner of Internal Revenue, and the collection of said taxes after assessment, all as provided in that certain act known as the Agricultural Adjustment Act of May 12, 1933, adopted by the Congress of the United States, all as more particularly hereinafter alleged.

V.

That on or about the 12th day of May, 1933, the Congress of the United States adopted an act known as the Agricultural Adjustment Act of May 12, 1933, and that said act was thereafter amended on April 7, 1934, May 9, 1934, June 19, 1934, and June 26, 1934, said act being Title 1, Chapter 25, Act of May 12, 1933; U. S. C. A. Title 7, Chapter 26, Sections 601 to 619, inclusive.

VI.

That under and by virtue of the terms of said Agricultural Adjustment Act the declared policy of Congress as shown by Section 2 thereof is as follows:

"1. To establish and maintain such balance between the production and consumption of agricultural commodities and such marketing conditions therefor as will reestablish prices to farmers at a level that will give agricultural commodities a purchas-

ing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war period of August, 1909 - July, 1914. * * *

2. To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumption demands in domestic and foreign markets.

3. To protect the consumer's interest by readjusting farm production at such level as will not increase the percentage of the consumer's retail expenditures for agricultural commodities or products derived therefrom which is returned to the farmer above the percentage which was returned to the farmer in the pre-war period, August, 1909 - July, 1914."

VII.

That said Agricultural Adjustment Act further provides that processing taxes are to be levied, assessed and collected on the first domestic processing of the commodity and are required to be paid by the processor. That the plaintiff is a processor of hogs and as hereinafter alleged has been required to pay a monthly processing tax fixed by the Secretary of Agriculture with respect to hogs slaughtered by it, and is now threatened with the payment of additional monthly processing taxes so fixed by the Secretary of Agriculture with respect to hogs slaughtered by it.

VIII.

That under and by virtue of the terms of said Agricultural Adjustment Act and the amendments thereto power is attempted to be conferred upon the Secretary of Agriculture -

(a) To agree with producers upon reduction in acreage or reduction in production of any basic agricultural commodity.

(b) To provide rental or benefit payments in connection therewith "in such amounts as the Secretary deems fair and reasonable".

(c) To enter into marketing agreements with processors, association of producers, and others.

(d) To put into effect processing taxes at rates determined and altered by him from time to time but only when the Secretary has first made a determination that rental or benefit payments are to be made with respect to any basic agricultural commodity.

(e) To make regulations to carry out his powers and a penalty for the violation of such regulations is prescribed in the sum of not over $100.00.

(f) To make exemptions from processing taxes when, in the Secretary's judgment, processing taxes are unnecessary to effectuate the declared policy of the Act.

(g) To add to the list of basic agricultural commodities provided in said Act such additional agricultural commodities as the Secretary may determine to be in competition with the commodities set forth in said Act at such time or times as the said Secretary shall determine that the payment of the processing tax upon any basic

agricultural commodity is causing or will cause to the processors thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof.

IX.

That said Agricultural Adjustment Act further provides that in determining the amount of processing tax to be assessed against any such processor the tax shall be at such rate "as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that (1) if the Secretary has reason to believe that the tax at such rate on the processing of the commodity generally or for any particular use or uses will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks in the commodity products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties and if thereupon the Secretary finds that any such result will occur, then the processing tax or the processing of the commodity generally or for any designated use or uses or as to any designated product or products thereof for any designated use or uses shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity. * * ."

"(c) For the purpose of Part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power

with respect to articles farmers buy as such commodity had during the base period specified in Section 2 (August, 1909 - July, 1914); and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture."

Said Agricultural Adjustment Act further provides, in Section 12 (b), that in addition to the specific sums appropriated by Congress to carry out said act that the proceeds derived from the taxes imposed under said Act are thereby appropriated to be available to the Secretary of Agriculture "for expansion of markets and removal of surplus agricultural products and the following purposes under Part 2 of this title: administrative expenses, rental and benefit payments and refunds on taxes."

That said Act further provides that among other things hogs are a basic agricultural commodity.

X.

That acting under said Agricultural Adjustment Act the Secretary of Agriculture has made the following determinations and entered the following orders fixing the amount of processing taxes, to wit:

(a) As of August 17, 1933 he proclaimed that benefit payments were to be made with respect to hogs, as basic agricultural commodity.

(b) That he determined from statistics of the Department of Agriculture that the difference between the current average farm price of hogs for the base period, August, 1909 - July, 1914, and the fair exchange value of hogs as of November 5, 1933 was $4.21 per hundred pounds live weight.

(c) That he held a hearing in Washington on September 5, 1933 and after said hearing determined that the imposition of a processing tax of $4.21 per hundred pounds live weight would result in an accumulation of surplus stocks of hogs or the products thereof or the depression of the farm price of hogs, and determined that the following rates of processing tax would prevent such results: 50 cents per hundred pounds live weight effective as of November 6, 1933; $1.00 per hundred pounds live weight effective as of December 1, 1933; $1.50 per hundred pounds live weight effective as of January 1, 1934; $2.00 per hundred pounds live weight effective as of February 1, 1934. That thereafter and with the approval of the President, the said Secretary of Agriculture made a determination as of December 21, 1933 wherein and whereby the rate of the processing tax on the first domestic processing of hogs as of January 1, 1934 shall be $1.00 per hundred pounds live weight; as of February 1, 1934, $1.50 per hundred pounds live weight; as of March 1, 1934, $2.25 per hundred pounds live weight, which said rate of $2.25 per hundred pounds live weight is now and ever since the said March 1, 1934 has been in full force and effect.

XI.

That there has been levied and assessed against the plaintiff herein as a first domestic processor of hogs, under the terms of said Agricultural Adjustment Act and the administrative orders of the Secretary of Agriculture on all hogs slaughtered by plaintiff, and that plaintiff has paid on account of such processing tax to the Collector of Internal Revenue for the Sixth Internal Revenue District of California the total sum of $33,319.84 on account of

hogs processed and slaughtered by it. That so long as said Agricultural Adjustment Act is enforced there will be levied and assessed against the plaintiff processing taxes based upon its average monthly slaughter of hogs, if the tax is continued, at the rate of $2.25 per hundred pounds live weight of the approximate average monthly amount of $1,500.00. That the failure of the plaintiff to pay said processing taxes as and when due will result in the imposition of the following penalties against it:

(a) A penalty of interest at the rate of one per cent (1%) per month from the due date of each monthly installment of said tax.

(b) A penalty of five per cent (5%) of the total amount of the tax on the failure of the plaintiff to pay within ten days after demand by the Collector of Internal Revenue, said penalty being added to the amount of the tax and the total tax and penalty thereafter drawing interest at the rate of one per cent (1%) per month.

(c) After a second ten-day notice, the Government is authorized under the provisions of the applicable law, if the tax is not paid, to file liens against any and all of plaintiff's property and to distrain the plaintiff's property, including its plant, inventory, cash on hand, and other assets, for the purpose of realizing the amount of the tax and penalties.

XII.

That the said Agricultural Adjustment Act, in so far as it authorizes the imposition, levy, assessment and collection of processing taxes against the plaintiff, is void, invalid and beyond the powers granted to Congress by the Constitution of the United States and violates the pro-

visions of the Constitution of the United States in the following parts:

1st: The Agricultural Adjustment Act violates the Fifth Amendment to the Constitution of the United States in that it takes the plaintiff's property without due process of law, for the reason that the processing tax goes into effect only when and in the event that the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity and ceases at the end of the marketing year current at the time the Secretary proclaims that rental or benefit payments are to be discontinued with respect to such commodity. That the so-called processing tax is therefore not a tax at all but is in effect the taking of property of the plaintiff and other processors for the benefit of another class of citizens.

2nd: That the said Agricultural Adjustment Act violates the Tenth Amendment of the Constitution of the United States in that it is not adopted in pursuance of any power expressly or directly granted to the Congress by the Constitution of the United States and that the matters in said Act attempted to be regulated are not matters which come within the purview of any power so delegated to Congress by the Constitution of the United States and is therefore reserved to the States respectively or to the people. That the declared policy of the Act shows that matters therein attempted to be regulated and the results to be obtained are matters which are within the exclusive jurisdiction of the States or the people and not within the jurisdiction of the Congress of the United States.

3rd: That the Agricultural Adjustment Act violates Article I, Section 8, of the Constitution of the United

States in that it is not a tax or a duty or an imposition or an excise as therein contemplated, for the reason that the so-called processing tax is not a tax for the benefit of the Government but is an arbitrary exaction from plaintiff and other processors for the benefit of certain farmers and producers and is to be assessed and collected only where it is found and determined by the Secretary of Agriculture that a necessity exists for the payment of rental or other benefits to such farmers or producers.

4th: That the powers attempted to be granted by the Congress of the United States to the Secretary of Agriculture by the said Agriculture Adjustment Act are legislative functions to be exercised by the Congress of the United States alone. That such legislative functions and power can not be delegated by the Congress to the Secretary of Agriculture or any one else. That specifically said Agriculture Adjustment Act attempts to delegate to the Secretary of Agriculture the power to determine and fix the rate of the processing tax and the necessity therefor when such processing tax shall cease to be levied and collected, what agricultural commodities shall be subject to the tax and who shall pay the same. That there is no formula or standard set up by the Congress according to which the Secretary of Agriculture shall act for the reason that the formula or standard therein attempted to be prescribed is uncertain, indefinate, and the factors upon which such determination are to be based are variable and impossible of exact or definite ascertainment. That the method of computation of said tax is indefinite and vague and the amount of the tax provided for is incapable of specific determination under the terms of said act; that there is no definition of the essential terms the determina-

tion of which the Secretary of Agriculture is to make in calling the said processing tax into being and fixing the rate thereof and for the further reason that the attempted standard or formula, that is to say, that level which equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, is destroyed by the exception that follows such formula or standard as provided in Section 9 (b) of said Act.

5th: That by the terms of said Agricultural Adjustment Act said Act is only to affect persons engaged in interstate commerce or whose business affects interstate commerce directly or indirectly and that plaintiff is not one of the persons therein contemplated to be liable for the processing tax, for the reason as aforesaid that plaintiff's business is entirely intra-state and none of it is interstate. That Congress has no power nor authority to regulate intra-state business.

6th: That the said Agricultural Adjustment Act is not being carried out as provided in its terms as said Secretary of Agriculture should carry it out, for the reason that the rate fixed by said Secretary of Agriculture for the months of January, February, March, April, and May, 1935, at the rate of $2.25 per hundred pound live weight for hogs is invalid and void for the reason that said rate has been fixed and established by the Secretary of Agriculture in complete disregard to the so-called formula prescribed by said Agriculture Adjustment Act for the establishing of such rate. As calculated and determined from the statistics of the Department of Agriculture the fair exchange value of pre-war parity farm price for hogs, the actual farm price for hogs, and the

excess of pre-war parity over the actual price for hogs for said months hereinabove enumerated are as follows:

1935	Fair exchange value or pre-war parity farm price for hogs	Actual farm price for hogs	Excess of pre-war parity of farm prices over actual prices.
January	$9.10	$6.87	$2.23
February	9.17	7.10	2.07
March	9.27	8.10	1.14
April	9.24	7.88	1.36
May	9.24	7.92	1.32

That the above set out figures show that there is no basis on which a processing tax at the rate of $2.25 per hundred pounds live weight of hogs can be levied or collected. That the action of the Secretary of Agriculture in establishing the rate of $2.25 per hundred pounds live weight is without foundation and against fact and is not justified by the Act even if it were valid. That said action of the Secretary of Agriculture will be continued in the future and that plaintiff will be required to pay large sums of money as processing taxes which are wholly unnecessary, in order to bring the purchasing power with respect to articles which farmers buy to the level of such purchasing power in the base period. That the action of the Secretary of Agriculture in this respect is unwarranted, arbitrary and contrary to the so-called formula or standard set out by said Act and adopted by the Secretary of Agriculture for the levying of such processing taxes on hogs.

XIII.

That there is about to be assessed against plaintiff herein a processing tax in the sum of $1354.60 for the month of April, 1935, and the sum of $1884.15 for the

month of May, 1935, and that thereafter for each month subsequent to the month of May, 1935 there will be assessed against this plaintiff a sum of money at this time not known to plaintiff for such processing taxes for each such month during each such month that the said Agricultural Adjustment Act shall remain in force. That upon the assessment thereof plaintiff will become liable for the payment thereof and will be forced to pay the same to the defendant, E. H. COHEE, as acting Collector of Internal Revenue for the Sixth District of California, and to NAT ROGAN, as Collector of Internal Revenue for the Sixth District of California, or to either of them. That unless the defendant, GUY T. HELVERING, as Commissioner of Internal Revenue, is enjoined from the assessing of said taxes about to be assessed or hereafter to be assessed and unless the defendant, E. H. COHEE, individually and as acting Collector of Internal Revenue for the Sixth District of California, and NAT ROGAN, individually and as Collector of Internal Revenue for the Sixth District of California, is enjoined from collecting such taxes, plaintiff will have to pay the same and in the event of nonpayment, be subject to the penalties hereinabove set forth.

XIV.

That plaintiff seeks the relief herein prayed for in equity for the reason that plaintiff has no speedy or adequate remedy at law for the reason that plaintiff can not file a claim for refund after payment of taxes and in the

event of the rejection thereof file suit for the return of such taxes, for the reason that a judgment obtained thereon would be of no force or effect because the Congress of the United States has made no appropriation for the payment of any such refunds. That although the Act as it now stands provides that refund shall be paid out of the taxes as collected, plaintiff is informed and believes and therefore alleges that the amounts expended by the Secretary of Agriculture far exceeds the amounts appropriated by the Congress for the carrying out of said Act and the amount of taxes collected by reason of said processing taxes, so that the said Secretary of Agriculture or the Treasurer of the United States have no funds out of which to pay such refunds in the event plaintiff should obtain a judgment for the refund of the taxes paid.

That further plaintiff is informed and believes and therefore alleges that there is now pending in the Congress of the United States an act to amend the Agriculutral Adjustment Act wherein it will be provided that no claim for refund shall be filed for any of the processing taxes theretofore paid nor shall any suit be maintained for the return or refund of any such taxes theretofore paid.

That plaintiff is informed and believes and therefore alleges that should he pay said tax at this time there would be no remedy at law available for him and therefore no adequate remedy at law to obtain the return or refund of said taxes theretofore paid. That plaintiff is further in-

formed and believes and therefore alleges that the defendants and none of them could respond to a judgment obtained by plaintiff against them for the wrongful collection of the taxes herein sought to be enjoined in the event this Act would thereafter be declared unconstitutional or void.

That plaintiff is informed and believes and therefore alleges that unless the defendants are restrained from the assessment and collection of the taxes herein set forth the said defendants will file or cause to be filed liens against the property of plaintiff which will, in the very nature of said liens be a restraint upon plaintiff's right to deal in and with its property as freely as it could have dealt therewith before the filing of any such liens and will wholly destroy the value of plaintiff's property and plaintiff's business. That said liens will attach to the inventory of plaintiff so that plaintiff from the date of the filing of said lien will be unable to sell any of its inventory, including its hogs, and by-products thereof and food products made therefrom. That plaintiff is further informed and believes and therefore alleges that unless the defendants are restrained from the collection of said taxes said defendants will have the right to and will attempt to collect said taxes by distraint and by seizing the property of plaintiff. That the filing of any such liens or the distraint and seizure of plaintiff's property will involve repeated and continuous acts of trespass upon the property of said plaintiff by said defendants and defend-

ants will employ numerous agents and servants to perform said acts of trespass. That as a result of any such distraint and seizure of the property of plaintiff herein there will be repeated breaches of peace if defendants are permitted the right to collect such taxes by such methods or any or either of them. That the defendants nor any of them have a financial responsibility near equal to the value of plaintiff's property or the damages which plaintiff will suffer by reason of the attempt to collect said taxes by the defendants, and if the defendants are permitted to continue and not be restrained from continuing their attempt to collect said taxes plaintiff will suffer irreparable damage and the defendants will be unable to respond to plaintiff in damages. That plaintiff will have no way nor manner within which to recoup its losses or damages. That unless the said defendants are restrained as herein prayed for there will be a multiplicity of suits all of which can be avoided by the granting by this Court of an injunction enjoining the defendants or any or either of them or their servants or agents from doing or attempting to do any of the acts herein sought to be enjoined.

XV.

That no issue of fact will or can be tendered by defendants. That it affirmatively appears from the said Agricultural Adjustment Act of May 12, 1933 that said Act is unconstitutional and void and that the plaintiff herein is therefore not liable for the payment of any of the said taxes herein sought to be enjoined.

WHEREFORE, plaintiff prays that the defendant GUY T. HELVERING, as Commissioner of Internal Revenue, be enjoined and restrained from assessing any processing taxes against this plaintiff and that the defendants E. H. COHEE, individually and as acting Collector of Internal Revenue for the Sixth District of California, and NAT ROGAN, individually and as Collector of Internal Revenue for the Sixth District of California, be enjoined and restrained from collecting or attempting to collect any of the said processing taxes, whether by distraint, levy, action at law or in equity or otherwise, and that the said defendants be restrained from filing a lien against plaintiff's property by reason of said taxes and that the said defendants be restrained from distraining or seizing plaintiff's property in an attempt to enforce the payment of said taxes. That the defendants be enjoined and restrained from possessing themselves of plaintiff's property or any of it. That this Honorable Court issue its preliminary injunction upon the filing of plaintiff's complaint herein and that a time be set for the hearing thereon and that at such trial said preliminary injunction be made permanent, forever enjoining and restraining said defendants, their officers, servants, agents, solicitors, attorneys, or successors in office, or any or either of them, from assessing the said tax herein complained of or from collecting or attempting to collect said taxes or any part thereof or from filing any liens against plaintiff's property by reason thereof or from distraining and seizing plain-

tiff's property, or in any way disturbing the quiet and peaceful possession of plaintiff in the free use of its property. That an Order to Show Cause be made herein and served upon the said defendants, requiring them to show cause at a date certain why they should not be permanently restrained and enjoined from committing the acts, or any of them, herein complained of, and that a Subpoena be directed to said defendants to answer the premises and to stand to and abide by such order and decree.

That this Honorable Court do render its declaratory judgment herein, declaring the said Agricultural Adjustment Act of May 12, 1933, unconstitutional and void for the reasons stated in plaintiff's complaint herein, and that the said Court further declare that the administration of said Act by the Secretary of Agriculture is illegal, invalid and void for the reason that said Act is not being administered according to its terms and conditions as set forth in plaintiff's complaint, and for such other and further relief as to this Court may seem just and equitable in the premises.

CLAUDE I. PARKER AND RALPH W. SMITH,
By Ralph W. Smith
Attorneys for Plaintiff.

(Verified.)

[Endorsed]: Filed July 3—1935 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk.

[Exhibit B.]

[Title of Court and Cause]:

AMENDMENT TO COMPLAINT

Comes now the plaintiff and files herein amendments to his complaint as follows, to wit:

I.

That there be added to said complaint a paragraph numbered XVI as follows:

"XVI.

The amount in controversy involved herein is in excess of $3,000.00. That there is a diversity of citizenship in that the plaintiff is a resident and citizen of the State of California and one of the defendants, Guy T. Helvering, Commissioner of Internal Revenue, is a resident and citizen of Washington, D. C."

II.

That said complaint be deemed to be amended so as the title of said complaint will read "Bill of Complaint in Injunction and for Declaratory Judgment."

CLAUDE I. PARKER AND RALPH W. SMITH,

By J. Everett Blum

Attorneys for Plaintiff.

[Endorsed]: Received Copy of the within Amdt to Comp this 2 day of July 1935 Pierson M. Hall.

Filed Jul 2 1935 R. S. Zemmerman, Clerk. By M. R. Winchell Deputy Clerk.

[Exhibit C.]

[Title of Court and Cause]:

SECOND AMENDMENT TO COMPLAINT

Leave of Court first being had and obtained plaintiff herein files this the Second Amendment to his complaint and amends his complaint by adding thereto the following paragraph to be known as paragraph "XVIII".

XVIII.

That the plaintiff herein has continuously, during the past several years, operated, maintained and conducted his business in a businesslike, workmanlike and efficient manner and that plaintiff has, during the times herein mentioned, continued to so conduct, operate and maintain his business. That prior to the time that said processing tax was levied against plaintiff, plaintiff continuously showed a profit from his pork and packing business. That since the assessing and levying of said processing tax against the plaintiff, plaintiff's profits from said pork packing business has been diminishing until at the time of filing plaintiff's complaint herein and for some time prior thereto plaintiff actually showed a loss from the operation of said pork packing business. That said diminishing returns and the loss from said pork packing business is directly, solely and only attributable to the assessment, levy and collection of said processing tax. That plaintiff has been unable to pass said tax on to the retailer or to the consumers of pork and has had to absorb the same and bear the loss therefrom. That plaintiff's profit in the pork business depends upon volume and that plaintiff has no control of and can not control the consumer market nor the con-

sumer resistance to prices. That plaintiff's overhead and the slaughtering and processing of hogs and pork is substantially a fixed overhead expense. That upon a reduction in the volume of hogs slaughtered there is not a corresponding reduction of operating expense, but that upon a reduction of hogs slaughtered there is a reduction in volume of pork sold and, consequently, a reduction in receipts therefrom. That solely by reason of said processing tax and not otherwise plaintiff has been forced to reduce the number of hogs slaughtered by reason of the Agricultural Adjustment Act affecting the price market of such hogs and the consequent reduction of retail sales and the consequent reduction of sales by plaintiff to retailers. That such reduction in sales by plaintiff has reduced the volume of sales to such extent that plaintiff for many months prior to the filing of its complaint herein has been operating its pork packing business at a loss, as aforesaid.

That plaintiff can not control the cost of the hogs which it is forced to purchase in the operating of its pork packing business. That said price of hogs being such that plaintiff can not control the same has materially increased plaintiff's cost of operation and consequently, plaintiff's prices to its retailers have had to be increased in accordance therewith, thereby resulting in a reduced consumer market. That since, as aforesaid, plaintiff must and does depend upon volume for its profit the reduction of volume of sales results in a reduction of profit to plaintiff. That said volume has been so re-

duced that plaintiff is now operating at a loss and consequently, by reason of said consumer market resistance plaintiff has been unable to pass said tax on to its retailers or to the consumers. That plaintiff's losses are attributable solely and only to said Agricultural Adjustment Act and the processing tax levied thereunder and not in any manner to the manner in which plaintiff conducts, operates and maintains its business.

WHEREFORE, plaintiff prays for the relief prayed for in its complaint.

Claude I. Parker
Ralph W Smith
J. Everett Blum

Attorneys for Plaintiff.

(Verified.)

[Endorsed]: Filed Sept 6 - 1935 R. S. Zimmerman, Clerk By Robert P Simpson Deputy Clerk.

[Exhibit D]

[Title of Court and Cause.]

TEMPORARY RESTRAINING ORDER.

WHEREAS, in the above entitled cause the verified Bill of Complaint for preliminary injunction has been filed; and

WHEREAS, it appears from said bill that there is danger of immediate and irreparable injury, loss or damage being caused to the plaintiff before notice can be served and a hearing had thereon unless the above named defendants are and each of them is, pending such hearing, restrained as herein set forth for the reason that plaintiff is required to pay on June 30, 1935, the amount of tax set forth in said bill. That if said tax is not then paid the defendants threaten to levy and distrain upon the property of the plaintiff and file liens against the property of plaintiff and that plaintiff has no option of paying the tax and sueing to recover it back because, as alleged in said bill, it is now threatened with the deprivation of its right to institute said suit;

NOW, THEREFORE, take notice that you, GUY T. HELVERING, are hereby temporarily restrained and enjoined from assessing or attempting to assess against the plaintiff such or any processing tax, and

That you, E. H. COHEE and NAT ROGAN, and your respective agent, servants, attorneys, solicitors and officers are hereby temporarily restrained and enjoined:

(a) From collecting or attempting to collect from plaintiff such or any processing tax, whether by distraint, levy, action at law or in equity;

(b) Imposing or giving notice of intention to impose or causing to be imposed or filed any lien upon the property of plaintiff, whether real or personal; or

(c) In any other manner collecting or attempting to collect said tax, as prayed for in the Bill of Complaint.

And IT IS FURTHER ORDERED that this cause be set down for hearing upon the application for temporary injunction and pursuant to the Order to Show Cause this day granted, on the 12th day of July, 1935, at ten o'clock a. m., and the defendants above named are hereby notified of said hearing and this temporary restraining order shall remain in full force and effect until said hearing and until the further order of this Court.

July 3—1935.

Hollzer

JUDGE OF THE ABOVE ENTITLED COURT.

[Endorsed.] Filed Jul 3 1935 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk.

[Exhibit E]

[Title of Court and Cause.]

MOTION TO DISMISS.

COME NOW Nat Rogan, individually and as Collector of Internal Revenue for the Sixth District of California, and E. M. Cohee, individually and as former Acting Collector of Internal Revenue for the Sixth District of California, defendants in the above entitled cause, for themselves only and severing from any other defendants, by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, their attorneys, and move the court to dismiss the Bill of Complaint herein with costs to be paid by the complainant, upon the following grounds and for the following reasons:

I.

That the court is without jurisdiction to restrain or enjoin the collection of the taxes herein involved, or to hear or determine the issues presented by said Bill of Complaint because:

(1) Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment or collection of a federal tax;

(2) The Bill of Complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a court of equity;

(3) Complainant has a plain, adequate and complete remedy in the ordinary course at law.

II.

That the United States of America is a real party in interest and it may not be sued without its consent.

III.

That there is no actual controversy between complainant and these defendants, or between any parties, over which this court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act does not authorize a litigation of questions arising under the revenue laws or against the United States and, particularly, does not authorize its use as a means for obtaining injunctive relief.

V.

That the proceeding attempted to be instituted by this Complaint is not authorized by the provisions of the Declaratory Judgment Act and cannot be maintained.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney,

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney,
Attorneys for Defendants
NAT ROGAN and E. M. COHEE.

[Endorsed.] Received copy of within this 10 day of July, 1935 Claude I. Parker Ralph W. Smith J. Everett Blum Attorneys for Plaintiff

Filed Jul 11 1930 R. S. Zimmerman, Clerk. By L. Wayne Thomas Deputy Clerk.

[Exhibit F]

[Title of Court and Cause.]

OBJECTIONS TO THE GRANTING OF A PRELIMINARY INJUNCTION.

COME NOW Nat Rogan, individually and as Collector of Internal Revenue for the Sixth District of California, and E. M. Cohee, individually and as former Acting Collector of Internal Revenue for the Sixth District of California, defendants in the above entitled cause, for themselves only and severing from any other defendants, by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, their attorneys, and in response to the Order to Show Cause why a preliminary injunction should not issue pendente lite as prayed for in said Bill of Complaint, allege:

I.

That the defendants are, and each of them is, a duly appointed, qualified and acting officer of the Internal Revenue Department of the United States.

II.

That the duties of said defendants are to collect taxes levied under the Internal Revenue Laws of the United States.

III.

That the complaint in the above entitled case seeks to enjoin defendants from collecting taxes levied under and by the Internal Revenue laws of the United States.

IV.

Section 3224 Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment or collection of a federal tax.

V.

The Bill of Complaint sets forth no facts which, if true, would entitle plaintiff to an injunction.

VI.

Complainant has a plain, adequate and complete remedy in the ordinary course at law.

DATED: This 10 day of July, 1935.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney,

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney,
Attorneys for Defendants
NAT ROGAN and E. M. COHEE.

[Endorsed]: Received copy of within this 10 day of July 1935 Claude I. Parker Ralph W. Smith J. Everett Blum Attorneys for Plaintiff.

Filed Jul 11 1935 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk.

[Exhibit G]

[Title of Court and Cause]:

PRELIMINARY INJUNCTION

WHEREAS, in the above entitled cause the verified Bill of Complaint for preliminary injunction and declaratory relief has been filed; and

WHEREAS, the temporary restraining order has been granted; and

WHEREAS, the defendants Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California, E. H. Cohee, Individually and as Acting Collector of Internal Revenue for the Sixth District of California, have appeared and filed their motion to dismiss the bill of complaint filed herein; and

WHEREAS, the matter came on regularly for hearing on said application for preliminary injunction and motion to dismiss on the 12th day of July, 1935, at the hour of ten o'clock a. m. thereof, before the above entitled Court, in the courtroom of Judge Harry A. Holzer; and

WHEREAS, said matter having been argued fully by the plaintiffs through their attorneys, Claude I. Parker and Ralph W. Smith, by J. Everett Blum, and by the appearing defendants through their attorneys, Pierson M. Hall, United States Attorney, and Clyde Thomas, Assistant United States Attorney; and

WHEREAS, it appears from said bill of complaint and from the argument had on said application for preliminary injunction and said motion to dismiss that unless a preliminary injunction is granted herein that immediate and irreparable injury, loss, or damage will be caused to plaintiff and that there will be a multiplicity of suits filed herein and that plaintiff has no speedy, adequate and complete remedy at law; that plaintiff's property rights will be destroyed; that there will be repeated breaches of the peace against the plaintiff and that there will be repeated and continuous acts of trespass upon and against the property of plaintiff by the defendants, and that the defendants or any of them do not have a financial responsibility near equal to the value of the plaintiff's property or the damages which plaintiff will suffer by reason of the attempt to collect said taxes by said defendants; and

WHEREAS, the Court has been fully advised and points and authorities submitted on behalf of both parties hereto and the matter having been submitted to the Court for its decision;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED that the application for the preliminary injunction prayed for is hereby granted and the motion of the appearing defendants to dismiss is denied.

IT IS FURTHER ORDERED that said preliminary injunction issue and that said appearing defendants, Nat Rogan, Individually and as Collector of Internal

Revenue for the Sixth District of California, and E. H. Cohee, Individually and as Acting Collector of Internal Revenue for the Sixth District of California, and their respective agents, servants, attorneys, solicitors and officers, are and each of them hereby is restrained and enjoined from:

(a) Collecting or attempting to collect from plaintiff such or any processing tax, whether by distraint, levy, action at law or in equity;

(b) Imposing or giving notice of intention to impose or causing to be imposed or filed any lien upon the property of plaintiff, whether real or personal; or

(c) In any other manner collecting or attempting to collect said tax.

That this preliminary injunction is based upon the grounds that unless the same is granted that immediate and irreparable injury, loss, or damage will be caused to plaintiff and that there will be a multiplicity of suits filed herein and that plaintiff has no speedy, adequate and complete remedy at law; that plaintiff's property rights will be destroyed; that there will be repeated breaches of the peace against the plaintiff and that there will be repeated and continuous acts of trespass upon and against the property of plaintiff by the defendants, and that the defendants or any of them do not have a financial responsibility near equal to the value of the plaintiff's property or the damages which plaintiff will suffer by reason of the attempt to collect said taxes by said defendants.

It is further ORDERED, ADJUDGED AND DECREED that the plaintiff is to furnish security in this case as a condition to the issuance of the injunction in the sum of $4000.00 cash or in lieu thereof an undertaking by good and sufficient surety in the sum of $4000.00, conditioned upon the payment of all taxes chargeable against the plaintiff herein, together with all costs assessed by the Court, in the event it is finally decided that the injunction is improperly issued or this action is dismissed.

It is further ORDERED, ADJUDGED AND DECREED that the plaintiff continue to file its processing tax returns on the forms provided therefor by the Collector of Internal Revenue with the defendant Collector of Internal Revenue on all hogs processed.

It is further ORDERED, ADJUDGED AND DECREED that the Court reserves the right to require additional security to be given from time to time as may seem necessary to protect the defendants and the Court also reserves the right to modify this order in any part or particular after notice to the parties.

It is further ORDERED, ADJUDGED AND DECREED that this preliminary injunction remain in force until the final determination of this matter or until further order of the Court.

It is further ORDERED that the defendants shall be and hereby are allowed twenty (20) days after notice hereof within which to answer the bill of complaint.

It is further ORDERED that an exception is allowed to the defendants with respect to this order.

Dated this 9th day of August, 1935.

Paul J McCormick
JUDGE OF THE ABOVE ENTITLED COURT.

APPROVED AS TO FORM:

CLAUDE I. PARKER AND RALPH W. SMITH,
BY J Everett Blum
Attorneys for Plaintiff.

Pierson Hall
PIERSON M. HALL, United States Attorney

Clyde Thomas
CLYDE THOMAS, Assistant United States Attorney

Attorneys for Appearing Defendants.

[Endorsed]: Filed Aug 9 - 1935 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk.

[Exhibit H]

[Title of Court and Cause.]

NOTICE OF MOTION TO VACATE TEMPORARY INJUNCTION

TO MAX GOLDRING, doing business under the firm name and style of GOLDRING PACKING COMPANY, plaintiff in the above entitled action, and

TO CLAUDE I. PARKER and RALPH W. SMITH, his attorneys:

You, and each of you, will please take notice that the defendant above named will move the above entitled court, in the courtroom of the Honorable Paul J. McCormick, in the Federal Building, Los Angeles, California, on the 27 day of August, 1935, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, for an order vacating and setting aside the temporary injunction heretofore entered, on the grounds and for the reasons stated in said motion, copy of which is hereunto attached.

Dated: This 22 day of August, 1935.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney,

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney.

[Acknowledgment]: Claude I Parker & Ralph W. Smith By J Everett Blum Attys for Pltf.

[Endorsed]: Filed Aug 22 1935 R. S. Zimmerman, Clerk. By B. B. Hansen Deputy Clerk.

[Exhibit I]

[Title of Court and Cause.]

MOTION TO VACATE TEMPORARY INJUNCTION.

TO THE HONORABLE PAUL J. McCORMICK, JUDGE OF THE ABOVE ENTITLED COURT:

Comes now, Nat Rogan, Collector of Internal Revenue, defendant in the above entitled cause, by Peirson M. Hall, United States Attorney in and for the Southern District of California, and Clyde Thomas, Assistant United Statse Attorney for said District, his attorneys, and moves the Court to vacate, set aside and dissolve the preliminary injunction entered in this cause, on the 9th day of August, 1935, upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of the taxes herein involved, and described in the Bill of Complaint, because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment or collection of a Federal tax.

2. The Bill of Complaint sets forth no facts, which, if true, would entitle complainant to the relief prayed for in a court of equity, or to any injunctive relief pendente lite in this cause.

3. Complainant has a plain, adequate and complete remedy at law.

II.

That upon the basis of all the records, files and proceedings in the above entitled cause, plaintiff is not entitled to any injunctive relief pendente lite.

III.

That since said preliminary injunction was entered, the alleged grounds upon which the same was granted are no longer in existence, in that the Congress has enacted H. R. 8492, entitled "An Act to Amend the Agricultural Adjustment Act, and for other Purposes", approved ....., which does not contain any provisions denying the right to litigate the legality of processing taxes in actions at law, such as was contained in the bill as originally passed by the House of Representatives, and the basis upon which the injunction herein was granted, but on the contrary said Act makes specific provision for the administrative receipt and consideration of claims for refund of any processing taxes alleged to have been exacted illegally and for suits at law to recover such taxes in the event of administrative rejection of such claims for refund.

IV.

That the plaintiff was guilty of laches in bringing this action in that it paid the processing tax each month for a period of a year and a half prior to the filing of this action without objection or protest or any action whatsoever to stop the collection of said tax, during which time the Government expended or committed itself for a sum in excess of $1,000,000,000, and the immediate stopping of the collection of said tax by said injunction will greatly embarrass the Government in its financial arrangements in reference thereto, whereas during the same time plaintiff, to-

gether with all persons similarly situated, has adjusted itself and the conduct of its business to the payment of said tax and is now so conducting its affairs.

V.

That since the preliminary injunction was entered herein the Circuit Court of Appeals for the Ninth Circuit has denied an injunction pending appeal in cases based on similar causes of action to that set out in plaintiff's bill of complaint and that such decision of the said Circuit Court is binding on this Court, so that it is improper for this Court to allow said temporary injunctions to remain in force and effect.

This motion is based upon all the records, files and proceedings in the above entitled cause.

Dated this 22 day of August, 1935.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney

Clyde Thomas
CLYDE THOMAS,
Assistant U. S. Attorney

Attorneys for Defendant.

[Acknowledgment]: Claude I Parker & Ralph W Smith By J. Everett Blum Attys for Pltf.

[Endorsed]: Filed Aug 22 1935 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk.

[Exhibit J]

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

Honorable PAUL J. McCORMICK, Judge

MAX GOLDRING, etc.,	)	IN EQUITY
Plaintiff,	)	No. 703-H
vs.	)	
NAT ROGAN, Individually and as Collector of Internal Revenue for the Sixth District of California, etc., et al.,	)	Minute Order on Motion to Vacate Temporary Injunction
Defendants.	)	August 30, 1935

This is a motion to vacate a temporary injunction. The restraining writ in this suit was issued by one of the judges of this court after hearing an argument before such judge. Similar injunctions have been granted by each of the judges of this court in equity suits by other complainants who seek to enjoin the collection of processing taxes under the Agricultural Adjustment Act, until the respective suits can be heard and decided on the merits.

In each of such pending suits similar motions to vacate the injunction pendente lite have been submitted. All have been presented for decision because of the urgency of a ruling in order to preserve the right of appeal within the thirty-day period from the date of the injunction.

It has been considered proper by the court, because of the absence of the other judges during the regular August vacation period of the court, that all of the motions to vacate be disposed of at this time. This order is

therefore generally applicable to all the pending suits and a like minute order will be entered in each suit respectively.

An event which should be considered has occurred since the interlocutory injunctions were granted: The Ninth Circuit Court of Appeals, in Fisher Flouring Mills Co. v. Collector, etc., decided August 15, 1935, by a divided opinion, in applications for temporary injunctions in aid of pending appeals in that Court from the denial of injunctions by a District Court in the State of Washington in suits like the one at bar, denied the respective appellants such restraint pending appeal.

No principle of judicial administration is more firmly established in the United States than that lower courts must submit to the control of superior judicial tribunals. Notwithstanding the strong dissent by one of the Circuit Judges in the Court of Appeals, it is our plain duty to follow the majority opinion.

Both opinions indicate that the appellate court was establishing a rule intended to control all applications for temporary injunctions in equity suits brought in this circuit where the suitors seek to restrain the collection of processing taxes under the Agricultural Adjustment Act, and such authoritative control requires the granting of the motion to vacate the preliminary injunction heretofore issued in this suit, and it is so ordered. Exceptions allowed complainant.

[Exhibit K]

[Title of Court and Cause]:

SUPPLEMENTAL COMPLAINT

Comes now the plaintiff, MAX GOLDRING, doing business under the firm name and style of GOLDRING PACKING COMPANY, and leave of Court having been granted to file this its Supplemental Complaint, states and alleges:

I.

That the Senate and the House of Representatives of the Congress of the United States has passed certain amendments to the Agricultural Adjustment Act known as H. R. 8492 and that the President of the United States has signed said enactment and that the said Agricultural Adjustment Act is thereby amended as hereinafter in part stated.

That said act provides in Section 21 (d) (1) of said Amendment that no recovery, recoupment, refund, etc., shall be made or allowed to any taxpayer unless after a claim for refund has been duly filed it shall be established in addition to all other facts required to be established to the satisfaction of the Commissioner of Internal Revenue and the Commissioner shall find and declare of record, after due notice and hearing thereon, that the taxpayer, directly or indirectly, has not passed said tax or any part thereof on to the retailer or consumer or back to the producer, but has in fact absorbed and borne the whole of said tax, before the Commissioner shall allow any such claim for refund. That if said Commissioner shall reject said claim the record of the Commissioner shall be certified by him to the Court in which the taxpayer brings action upon his rejected claim for re-

fund and such record so certified shall become and be the evidence of taxpayer's case before such Court.

Section 21 (d) (2) of said Amendment provides in part in substance, that no suit or action shall be maintained for recovery of refund, etc., unless prior to the expiration of six months after the date on which such tax imposed by this title has been fully declared invalid, a claim for refund is filed by the person entitled thereto, and that no suit or proceedings shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time.

That the said provisions of the law as it now stands substantially, effectively, and for all practical purposes and to all intents, take away from and deny plaintiff any and all remedy at law, for the reason that plaintiff is required at the outset to prove a negative in that plaintiff must prove that said tax has not been passed on or back as in said Section 21 (d) (1) provided. That such proof is not capable of being made to a certainty nor with definiteness, and particularly is such proof uncertain and indefinite in regard to plaintiff's business, to wit, pork processing, for the reason that the processing tax is levied upon the live weight of the hog at the rate of $2.25 per cwt.; that not more than 75 per cent of said live hog is usable in the pork processing business, and that said 75 per cent of the live weight of the hog is divided into numerous portions including ham, sausage, bacon, lard, loin, hocks, feet, heads, shoulders, etc. That some of said products are pickled, some are smoked, and others go through sundry other processes, and some are sold fresh. That to allocate the proportional part of the tax to each such article would be at the best of an uncertain and indefinite nature and difficult of legal proof.

That plaintiff stores said various cuts and portions of said hog until sale thereof is available and different portions are necessarily marketed at different times and at greatly varying prices and that, therefore, tracing the relation of the price paid for each portion of such hog, including the processing tax, and the aggregate price obtainable upon sale of all of said portions of any one particular hog and at such various times and at different market or sale prices so as to prove the absorption or nonabsorption of the said processing tax by plaintiff would be impracticable, uncertain, indefinite, thereby rendering plaintiff's action at law incomplete, inadequate and not as plain, speedy, adequate, full or complete a remedy as equity could grant by way of injunctive relief. That further, an accounting system necessary to trace such costs to the various portions of such hog would of necessity be cumbersome, weighty, costly and difficult to maintain. That such bookkeeping and accounting system would in and of itself be a sufficient bar and hazard to plaintiff's remedy at law because of such cost, inefficiency and cumbersomeness aforesaid.

II.

That each, all and every of the amendments of said Agricultural Adjustment Act embodied in H. R. 8492 and known as the Amendments of August 27, 1935, are and each of them is void, invalid and unconstitutional upon each and every of the grounds set forth in plaintiff's original bill of complaint as reasons and grounds for the invalidity and unconstitutionality of the said Agricultural Adjustment Act prior to the making and taking effect of such amendments.

III.

That since the filing of plaintiff's original Bill of Complaint the taxes for each and every of the months

subsequent to the month set forth in plaintiff's original Bill of Complaint, to and including the month of August, 1935, has become due and payable and plaintiff has been threatened with distraint and seizure of his property unless said taxes are paid upon demand of the defendant. That each and every of the things alleged in plaintiff's original complaint as results of any such distraint and seizure or imposition of any liens by defendant will result to plaintiff if defendant's threats since the filing of said complaint are carried out and made effective. That each and every of such acts of filing and imposing liens against plaintiff's property or distraining and seizing plaintiff's property will constitute additional, continual trespasses against plaintiff and plaintiff's property and result in various and sundry breaches of the peace, which will result in a multiplicity of suits, for the reason that said tort actions could not be joined together in one action at law and plaintiff would have no adequate, plain, speedy, complete and full remedy at law, as alleged in plaintiff's original bill of complaint.

WHEREFORE, plaintiff prays judgment as set forth in his original bill of complaint and hereby incorporates herein the said prayer of his original complaint by this reference, as fully as if the same were reiterated and restated herein.

CLAUDE I. PARKER AND RALPH W. SMITH,
By J. Everett Blum
Attorneys, Solicitors and Counsel for Plaintiff.

[Verification] Received Copy of the within this 12th day of Sept 1935 Peirson M. Hall D H.

[Endorsed]: Filed Sept 13 1935 R. S. Zimmerman, Clerk. By B. B. Hansen Deputy Clerk.